



CITY OF MIAMI SPRINGS, FLORIDA

The **Board of Adjustment** met in Regular Session at 7:00 p.m., on Monday, May 2, 2011 in the Council Chambers at City Hall.

1) Call to Order/Roll Call

The meeting was called to order at: 7:02 p.m.

The following were present:

Chairman Manuel Pérez-Vichot
Vice Chairman Francisco Fernández
Kevin Berounsky
Ariana Fajardo *
Alternate Bill Tallman

Absent: Ernie Aloma

Also present: City Attorney Jan K. Seiden
City Planner Richard E. Ventura
Board Secretary Lina Bryon

(*Board member Fajardo arrived at 7:10 p.m.)

2) Approval of Minutes

Minutes of the April 4, 2011 meeting were approved **as amended** upon motion by Vice Chair Fernández seconded by Board member Berounsky and carried **4-0** by voice vote.

3) Old Business

A) Case # 10-V-11

Jorge and Ana Fernández
565 East Drive
Zoning: R-1C, Single-Family Residential
Lot Size: 70' x 126.65'

Applicants are requesting a variance from Code Section 150-043 R-1C district (C) *Building site area required*: To construct an addition to their home on an undersize lot.

Note: This case was tabled at the April 4, 2011 Board of Adjustment.

City Planner Ventura stated that Code Section 150-043 (C) requires a minimum average lot width of 75 feet; in the present case the lot is 70 feet. He explained that the home meets the Code requirements at the front, back and south side yard setbacks, but pointed out that there is an existing encroachment in the north side yard and a detached structure in the southeast back corner of the lot which encroaches on the south side yard setback.

City Planner Ventura said that there is a shed toward the northeast back corner that encroaches on the rear yard setback. He noted that a search of the on-line records for the Building Department did not produce permits for either the existing detached structure or the shed.

The City Planner further explained that the proposal is to construct an open terrace to the rear of the home. If constructed as proposed, only the rear yard setback would change, at 51 feet, within code requirements and the resulting area would be approximately 13 percent, again within code requirements.

Staff therefore recommends approval for this proposed installation of a covered terrace at 565 East Drive.

Chairman Pérez-Vichot said that the applicants would have to sign a covenant with the City.

City Attorney Seiden explained that the covenant says that the terrace will remain as an open space and will never be enclosed or screened.

The applicants agreed.

Chairman Pérez-Vichot asked if there was any correspondence received regarding the proposed variance.

City Planner Ventura responded that the 29 courtesy notices did not generate any response.

Chairman Pérez-Vichot asked for comments from the Board or the audience.

Vice Chair Fernández moved to approve the requested variance of constructing an open terrace with the condition that the applicants sign a covenant with the City that it will remain as an open space. Board member Tallman seconded the motion and it was unanimously carried by voice vote.

City Attorney Seiden reminded the Applicant of the ten-day appeal period and explained that this Board makes only recommendations.

City Planner Ventura asked the applicants to go the Building Department one week after this Friday for the signing of the covenant.

4) New Business:

**A) Case # 12-V-11
Kristine and Remberto Morejón
661 Plover Avenue
Zoning: R-1B, Single-Family Residential
Lot Size: 75 ft. x 135 ft.**

Applicants are seeking a variance from Code Section 150-017 Recreational Vehicles (B) *Parking and storage:* To store a boat in the side yard of their property.

City Planner Ventura read the applicant's statement:

"I have a boat that measures 25 ft. and with the trailer measures 29 ft. Please grant me the right of having my boat next to my house, being that I can't put it behind my house."

City Planner Ventura stated that Code Section 150-017 (B) (3) requires "...If the recreational vehicle cannot be parked or stored in an enclosed structure or in the rear yard because of an obstruction which cannot be removed so as to permit parking of the vehicle...the property owner must apply for a variance to permit the recreational vehicle to be parked or stored ... in the side yard...not closer than three feet from any property line."

City Planner Ventura explained that the boat at 661 Plover Avenue is being maintained in the west side yard as indicated in the first case photo. The boat is 29 feet in length and 8 feet in width with a height of 10 feet. He noted that second and third case photos show that the boat is of such width that it could not simply be backed up into the rear yard given the obstructions, including the trees, shown along the inside of the west side yard fence.

The City Planner further explained that the case photo number four indicates sufficient room in the back yard to re-place the boat there, and with the home being the second house in from the west of the block, a rolling gate should be installed along the back yard fence for access from the back alley.

The only other alternative that Staff could recommend is that the boat be removed from the property entirely, as it is too high to be screened by an elongated wood fence and gate.

Remberto Morejón, from 661 Plover Avenue said that the boat looks bigger than it really is, because of the canopy. He explained that he keeps the boat at the side of the house because if he pushes the boat to the back he will have to cut several trees.

Chairman Pérez-Vichot asked if there was any correspondence received regarding the proposed variance.

City Planner Ventura responded that the 27 courtesy notices generated no response.

City Attorney Seiden said that sometimes it is difficult to apply the ordinances, because each property is different and what is big for one is not that big for another, and that is the reason the Code has general rules; and in some cases the applicant should come and get a variance and let the Board members make a judgment based on the facts.

Chairman Pérez-Vichot noted that he will like to see the boat without the canopy.

Board member Fajardo asked if the boat has a t-top and the applicant said that it has a canopy.

The applicant recognized that he put so much money into the boat and asked the Board members to work with him on this request.

Chairman Pérez-Vichot recognized that the boat could not be pushed back more than where it is.

City Attorney Seiden asked to whom belongs the wooden fence.

Mr. Morejón answered that it should belong to his house.

Chairman Pérez-Vichot replied that the survey does not show any fence in his yard.

City Planner Ventura said that the survey was updated.

Chairman Pérez-Vichot stated that it should have explanatory notes.

Board member Fajardo asked about the neighbor's opinion on the boat.

Kristine Morejón, from 661 Plover Avenue, replied that if nobody answered anything in the courtesy notices it is because nobody has a problem with their boat.

The applicant commented that nobody said anything about the boat.

Board member Fajardo advised the applicant that the boat is really big and if they could buy that kind of boat they should be able to find a place to park it. She said that at least they will be able to remove the canopy of the boat and she remembered a case in which the owners had to remove the t-top of the boat.

Vice Chair Fernández said that looking at the wind shield and the canopy goes above the flat roof on the back.

The applicant said that he will remove the canopy if he is asked to do it.

Vice Chair Fernández noted that the boat is too big for that property even if the owner takes off the canopy.

Vice Chair Fernández moved to deny the requested variance. Board member Fajardo seconded the motion and it was unanimously carried by roll call vote.

City Attorney Seiden said that the owner has two alternatives: Appeal to the City Council, or experiment with a rolling gate as the City Planner suggested, even though the house will lose some trees.

Chairman Pérez-Vichot said that the owner has some options if he decided to appeal to the City Council, including taking a picture of the boat without the canopy.

Ms. Morejón explained that she has seen boats in the City at the side of the houses without a fence or anything; big boats full of mold.

Board member Fajardo asked the applicant to report those cases.

City Attorney Seiden explained that cases like that come before the Board of Adjustment when somebody reports them. He affirmed that this Board has been always very consistent in their recommendations to the Council.

Board member Fajardo reiterated that the applicants can make an appeal.

Chairman Pérez-Vichot clarified that this Board makes only recommendations and the Council is the body that denies or approves the variances.

The applicant asked if he can place the boat in the back yard if the Council denies the appeal.

Board member Fajardo said that they can put the boat at the back of the house or remove it from the property.

To answer the applicant's question, the City Attorney responded that the appeal process could take around a month.

City Planner Ventura asked the applicants to contact him tomorrow if they are going to appeal and to prepare a special letter that goes with that process.

The applicant asked if they can put the boat in the back of the house if everything else fails.

Board member Fajardo answered affirmatively.

The applicant asked if he decided to place the boat at the back of the house if he can cut several trees.

The Chairman said that they need a permit for tree removal.

B) Case # 14-V-11
Alexis Nieto and Clara Alvarez
1061 Plover Avenue
Zoning: R-1C, Single-Family Residential
Lot Size: 75 ft. x 127 ft.

Applicants are seeking a variance from Code Section 150-017 Recreational vehicles (B) *Parking and storage*: To store a boat in the side yard of their property.

City Planner Ventura stated that Code Section 150-017 (B) (3) requires "...If the recreational vehicle cannot be parked or stored in an enclosed structure or in the rear yard because of an obstruction which cannot be removed so as to permit parking of the vehicle...the property owner must apply for a variance to permit the recreational vehicle to be parked or stored ... in the side yard...not closer than three feet from any property line."

City Planner Ventura explained that the boat at 1061 Plover Avenue is parked in the east side yard along with what appears to be two jet-skis and one all-terrain vehicle (ATV) in front of the boat at the time that case photo number two, was taken. The boat is directly underneath a canopy, but a search of the Building Department's file did not produce a permit for the canopy.

The City Planner noted that both, the case survey and the case photo number four, indicate that there is sufficient room in the far east side of the back yard to simply back up not only the boat, but the ATV and the two jet skis past the back wall of the home. The canopy, which cannot remain in the side yard, can be moved to cover the boat at its new location but it must meet rear and side yard setback requirements.

Therefore Staff recommends denial of this variance request to maintain not only the boat but the jet skis and the ATV [which Staff has concluded fall under the definition of *Recreational vehicles* per Sec. 150-017 (A) (1)] in the forward east side yard of 1061 Plover Avenue.

Chairman Pérez-Vichot said that the canopy and the boat are two different issues and this requested variance is only for the boat.

Alexis Nieto from 1061 Plover Avenue said that the house has a fence and a quarantine area for his dog.

The Chairman reiterated that there is enough room to place the boat at the back of the house.

City Planner Ventura pointed out that after looking at case photo number five it is evident that the house has enough room at the back to put the boat there.

Mr. Nieto replied that he decided moving to Miami Springs in 2002 to have enough space for his kids to play.

Chairman Pérez-Vichot noted that the Code says that if a house has space in the back yard a boat has to be there; the Chairman recognized that everybody wants to have the back yard clear but that is what the Code establishes.

Chairman Pérez-Vichot said that the boat is small and barely visible from the street, is the canopy that is visible.

The City Planner asked the applicant which of the Code Enforcement officers talked to him.

Mr. Nieto said that it was a man.

Vice Chair Fernández stressed the fact that the maximum amount of recreational vehicles allowed at the back of the house is three; in this case one of them is at the side.

The applicant recognized that he will have two more four wheelers and a trailer coming next month from North Carolina.

City Attorney Seiden remarked that he can have the vehicles inside a garage where they are not visible.

The Chairman commented that the Applicant could place the vehicles inside the trailer and there will only be two.

City Attorney Seiden recommended not making a decision about that because it is a separate issue. He advised not speculating about this and if something changes in the future Mr. Nieto will see it by then.

Chairman Pérez-Vichot commented that the applicant could make a commitment for storing the vehicles inside the trailer.

City Attorney Seiden affirmed that only three vehicles are allowed per residence and explained that if the circumstances change the applicant could come back and ask for another variance at any time.

Mr. Nieto said that his dog has to be quarantined because it is not very friendly.

Vice Chair Fernández suggested that the applicant could make a kennel for the dog.

Mr. Nieto remarked that he does not want to put his dog in a kennel, and explained that his dog is in a section of the yard and around his vehicles to protect them.

Vice Chair Fernández commented that the house has another fence that did not appear in the drawings.

City Attorney Seiden said that the house has a gate in the fence which allows the applicant to move the boat back and forth still having the quarantine area.

Board member Fajardo noted that if the applicant wants to quarantine his vehicles, he should move everything back, readjust the gate and put his dog back there.

The applicant commented that he does not want to install another fence and does not want to occupy all the back yard.

Board member Fajardo emphasized that the house has plenty of room at the back to place everything.

Vice Chair Fernández pointed out that the same way the applicant bought that property to live in Miami Springs and have a big yard for his kids, people moved here to appreciate the surroundings and look at the beautiful trees. He said that the applicant placed the boat at the side yard for his own convenience when he has space at the back yard. The Vice Chair remarked that the applicant does not have a hardship.

The applicant recognized that the boat is the problem because he can deal with the rest of the recreation vehicles.

Chairman Pérez-Vichot recommended that the applicant should push the boat back.

Board member Berounsky noted that besides the number of vehicles, the boat is barely seen from the street.

Chairman Pérez-Vichot asked if the applicant has a screen on the side of the house.

The applicant answered that there is a six foot fence all around the house. The Chairman asked about the correspondence received and the City Planner replied that one letter opposing the granting of the variance was received.

Chairman Pérez-Vichot asked the audience for opinions in favor or against it and there were no comments.

Board member Fajardo advised that the Board should comply with what the Code says, not with the spirit of the Code, because it could be dangerous.

Chairman Pérez-Vichot pointed out that somebody could have a 2' by 2' boat and cannot keep it on the side if there is a back yard to place it.

City Attorney Seiden stated that there it is a priority as to where the boat should be placed.

Mr. Nieto said that he can remove the canopy of the boat.

The Chairman replied that the canopy is not the problem.

Board member Fajardo moved to deny the requested variance because the applicant has not demonstrated a real hardship. Vice Chair Fernández seconded the motion and it was carried 3-2 by roll call vote, with Alternate Tallman and Board member Berounsky casting the dissenting votes.

Vice Chair Fernández explained that the applicant could make an appeal to the City Council.

Chairman Pérez-Vichot recognized that it would make sense to address the size of the boat.

Mr. Nieto replied that the only reason that the boat was visible is because they lift it up to drain it, because it was there since 2002. He recognized that he did not know about the ordinance.

City Attorney Seiden reminded the Applicant of the ten-day appeal period and explained that this Board makes only recommendations.

C) Case # 15-V-11
Jesús Román
391 North Royal Poinciana Boulevard
Zoning: NBD; Neighborhood Business District
Lot Size: 13,890 sq. ft. total

Applicant is seeking a variance from Code Section 150-005 *Alcoholic beverages* (A) (4), (B), (D) and (F): For the placement of a 2-COP beer and wine license at an existing restaurant.

City Planner Ventura said that Code Section 150-005 (A) (4) states that a series 2-COP license is required for the sale of beer and wine for consumption on-premises and in sealed containers for consumption off-premises.

City Planner Ventura noted that Code Section 150-005 (B) requires City approval for the sale or consumption of alcoholic beverages, when operating under a series 2-COP license, within 300 feet of any residential district or within 500 feet of any church or public school.

City Planner Ventura advised that Code Section 150-005 (D) requires City approval for the sale or consumption of alcoholic beverages, when operating under any State of Florida alcoholic beverage license, if the premises are located within 1,000 feet of any other licensed premises already in operation.

The City Planner pointed out that Code Section 150-005 (F) requires City approval for the issuance or the transfer of a liquor license.

Mr. Ventura explained that 391 North Royal Poinciana Boulevard is Roman's Pizza, and the owner, Mr. Jesús Román, has submitted copies of his proposed menu and articles of incorporation.

Staff therefore recommends approval of this variance request to Code Sections 150-005 (A) (4), (B), (D) and (F) for the granting of a series 2-COP license at 391 North Royal Poinciana Boulevard.

Chair Pérez-Vichot said that the applicant should sign a covenant with the City.

City Attorney Seiden explained that the covenant is a document in which he guarantees that 51% of his revenues will be generated from the sale of the food and not for the sale of the drinks.

The applicant pointed out that he will sign the covenant.

City Planner Ventura asked the applicant to come one week after this Friday to sign it.

Chairman Pérez-Vichot asked for any comments from the Board or the audience in favor or against it.

Vice Chair Fernández moved to approve the requested variance for the 2-COP License. Board member Fajardo seconded the motion and it was unanimously carried by voice vote.

City Attorney Seiden reminded the Applicant of the ten-day appeal period and explained that this Board makes only recommendations.

6) Adjournment

There was no further business to be discussed and the meeting was adjourned at 7:52 p.m.

Respectfully Submitted,
Lina Bryon
Clerk of the Board

Approved as written during meeting of: 08-01-2011

Words ~~stricken through~~ have been deleted. Underscored words represent changes. All other words remain unchanged.

“The comments, discussions, recommendations and proposed actions of City Citizen Advisory Boards do not constitute the policy, position, or prospective action of the City, which may only be established and authorized by an appropriate vote or other action of the City Council”.
